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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

NOV 14 2011

at 3 o'clock and 58 min. P.M.
SUE BEITIA, CLERK

Attorney for Plaintiff
ALLIS LINDSEY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

ALLIS LINDSEY,

Plaintiff,

vs.

PNC MORTGAGE, FORMALLY
KNOWN AS NATIONAL CITY
MORTGAGE; PHILLIPS AND
COHEN ASSOCIATES, LTD.; JOHN
DOES 1-50; JANE DOES 1-50; DOE
CORPORATIONS 1-50; DOE
PARTNERSHIPS 1-50; DOE
ENTITIES 1-50; DOE
GOVERNMENTAL UNITS 1-50,

Defendants.

No. CV11-00105-HG/BMK_

ADDITIONAL MEMORANDUM IN
SUPPORT OF PLAINTIFF'S
MOTION FOR REHEARING ON
DEFENDANT PHILLIPS AND
COHEN ASSOCIATES' MOTION
FOR SUMMARY JUDGMENT;
DECLARATION OF WILLIAM H.
GILARDY, JR.; CERTIFICATE OF
SERVICE

ADDITIONAL MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION
FOR REHEARING ON DEFENDANT PHILLIPS AND COHEN ASSOCIATES'
MOTION FOR SUMMARY JUDGMENT

Plaintiff ALLIS LINDSEY (hereinafter referred to as "Plaintiff"), by and through her attorneys, WILLIAM H. GILARDY, JR. and HARVEY M. NAKAMOTO JR., respectfully submits this Additional Memorandum in support of Plaintiff's Motion for Rehearing on Defendant PHILLIPS AND COHEN ASSOCIATES' (hereinafter referred to as "Phillips and Cohen") Motion for Summary Judgment. This Motion for Rehearing is based on Plaintiff's need for more time to establish the identity and agency relationship of the caller who claimed to be named "Rick Santello" in addition to the matters discussed the original Memorandum filed herein.

I. BACKGROUND AND FACTS

In addition the fact and circumstances described in the original Memorandum filed herein there are additional issues that need to be brought to the attention of the Court. Both Phillips and Cohen and also PNC Mortgage deny employing a man named "Rick Santello" and on this basis have essentially stonewalled all discovery directed at Defendants. After failing to get any useful evidence from Defendants, Plaintiff's Counsel diligently pursued alternate means of ascertaining the true identity "Rick Santello" and his employer.

To review the facts briefly, on February 19, 2010, a person identifying himself as "Rick Santello," called Plaintiff's cell phone and left the following voice message: "You're out of there. We have already served an injunction to rip

your fuckin ass out of there, PNC is your servicing company YOU! WHORE! YOU FUCKING WHORE!” (Complaint, ¶ 16). Despite Plaintiff’s best efforts, Plaintiff to date has not been able to definitively identify this caller or his agency relationship. A review of the efforts put forth by the Plaintiff are set forth in the Memorandum attached to Plaintiffs Second Motion To Enlarge Time To File An Amended Complaint.

In addition to the discovery efforts made with regard to T-Mobile, as stated in In the Declaration of William H. Gilardy, Jr. attached the Plaintiff Motion For Rehearing On Defendants Phillips and Cohen Associates’ Motion For Summary Judgment and Plaintiff’s Second Motion For Attrition Time To File Amended Complaint, on October 17, 2011 William H. Gilardy, Jr. received a phone call from a Caller identifying herself as Patty Caldwell, T-Moble corporate counsel and she agreed to honor the Suboenas sent to T-Mobile. T-Mobile has still not done so as if the date hereof and an appropriate Motion will be filed by Plaintiff during the week of November 14, 2011 (see Declaration of William H. Gilardy, Jr. dated November 11, 2011)


II. DISCUSSION

It is clear that Plaintiff needs addition time for discovery pursuit to Rule 56 (f) to defeat Plaintiffs Motion for Summary Judgment. Plaintiff has been diligent in discovery and T-Mobile has been completely un-cooperative, at best, in

Plaintiff's effort to get to bottom of the issues of the case. Contrary to Phillips and Cohen's insistence, Plaintiff's current inability to definitively identify "Rick Santello" and his agency relationship is not the product of any failure on the part of Plaintiff or Plaintiff's Counsel. As illustrated in the herein and in previously filed pleadings, Plaintiff has made numerous and repeated attempts through various different mediums to discover the identity of "Rick Santello and still need additional time

For the aforementioned reasons, this Court should grant Plaintiff Motion for Rehearing on Defendant Phillips and Cohen Associates' Motion for Summary Judgment.

Dated: Honolulu, Hawaii, 11-14-11



WILLIAM H. GILARDY, JR.
HARVEY M. NAKAMOTO, JR.
Attorneys for Plaintiff,
ALLIS LINDSEY